

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

BIJAN NIKFARD,  
Plaintiff,

V.

# STATE FARM FIRE AND CASUALTY COMPANY,

**Defendant.**

Cause No. C19-6001RSL

## ORDER REGARDING PLAINTIFF'S MOTIONS IN LIMINE

This matter comes before the Court on “Plaintiff’s Motions in Limine.” Dkt. # 67. This matter is currently set for a bench trial starting on April 5, 2021. Having reviewed the memoranda, declarations, and exhibits submitted by the parties,<sup>1</sup> the Court finds as follows:

## **1. Evidence Not Disclosed in Discovery**

Plaintiff seeks an order excluding “any evidence (not including demonstrative or illustrative exhibits) that should have been identified or provided with defendants’ initial

<sup>1</sup> The parties have agreed that testimony from experts or witnesses (other than records custodians) not disclosed during discovery, references to post-litigation settlement discussions, and references to the substitution of Ashely Giesa in place of Susan Evans as plaintiff's industrial hygienist expert should be excluded from trial.

1 disclosures" but were not.<sup>2</sup> Dkt. # 67 at 2. Plaintiff does not identify any document or other  
2 evidence that falls within this category, and the Court declines to exclude evidence in the  
3 abstract.

4 **2. Evidence Regarding the Need for Water Mitigation and/or Mold Remediation**

5 Plaintiff acknowledges that evidence regarding the need for water mitigation and mold  
6 remediation activities is relevant: he is seeking to recover the expenses he incurred in hiring  
7 specialists to develop a plan for evaluating and addressing water and mold issues. Plaintiff  
8 argues that State Farm should be precluded from offering evidence on these topics because it did  
9 not identify an expert in support of its contention that water and mold concerns would be  
10 addressed by gutting the house to its studs. There is clearly a difference of opinion among the  
11 contractors regarding the necessary scope of repair as the delays in remediation increased. Both  
12 parties will be permitted to explain the bases for their preferred repair estimate, including not  
13 only their justifications for the tasks and expenses listed, but also the reason why other tasks and  
14 expenses were not included in the scope of work.

15 **3. Deposition Testimony of Pamela Gates**

16 Ms. Gates is a third-party insurance agent who communicated with both George Nikfard  
17 and State Farm regarding the loss and claims handling process. State Farm accepted service of  
18 her trial subpoena and notified plaintiff that Ms. Gates will be on vacation and unavailable to  
19 testify the week of April 5th. Under Fed. R. Civ. P. 32(a)(4)(B), a party may use the deposition

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25 <sup>2</sup> In reply plaintiff also seeks the exclusion of evidence that was responsive to his formal  
26 discovery requests but was not provided. Dkt. # 1. The expanded motion was not timely raised.  
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1 of a witness at trial if “the witness is more than 100 miles from the place of hearing or trial or is  
2 outside the United States, unless it appears that the witness's absence was procured by the party  
3 offering the deposition.” Plaintiff believes that Ms. Gates will be more than 100 miles from the  
4 courthouse during the trial of this matter and therefore requests that he be permitted to present  
5 her videotaped deposition testimony in lieu of live testimony. There is no indication that plaintiff  
6 has procured Ms. Gates’ absence from the district, and State Farm has not provided any  
7 additional information about Ms. Gates’ whereabouts during the relevant period. The request is  
8 therefore granted. Plaintiff may present Ms. Gates’ deposition testimony at trial if she fails to  
9 appear in response to the subpoena.

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11 **4. Exclusion of Non-Party Witnesses**  
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13 Non-party witnesses, including George Nikfard, will be excluded from the courtroom  
14 until after they have testified.  
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16 Dated this 24th day of March, 2021.

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18 Robert S. Lasnik  
19 United States District Judge  
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